

HOUSE BILL No. 2149

By Committee on Children and Seniors

1-27

1 AN ACT concerning child care facilities; relating to individuals
2 maintaining or residing, working or regularly volunteering at a child
3 care facility; imposing prohibitions based on state and federal law;
4 providing exemptions at the discretion of the secretary for children and
5 families; amending K.S.A. 65-516 and repealing the existing section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 65-516 is hereby amended to read as follows: 65-
9 516. (a) No person shall knowingly maintain a child care facility if there
10 resides, works or regularly volunteers any person who ~~in this state or in~~
11 ~~other states or the federal government:~~

12 (1) *Subject to the provisions of subsection (k):*

13 (A) Has been convicted of a crime that is classified as a person felony
14 under the Kansas criminal code *or similar statutes of any other state or the*
15 *federal government;*

16 (B) has been convicted of a felony under K.S.A. 2010 Supp. 21-
17 36a01 through 21-36a17, prior to their transfer, or article 57 of chapter 21
18 of the Kansas Statutes Annotated, and amendments thereto, or any felony
19 violation of any provision of the uniform controlled substances act prior to
20 July 1, 2009, *or similar statutes of any other state or the federal*
21 *government;*

22 (C) has been convicted of any act that is described in articles 34, 35
23 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal,
24 or article 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or
25 K.S.A. 2020 Supp. 21-6104, 21-6325, 21-6326, 21-6418 through 21-6422
26 or 21-6424, and amendments thereto, or been convicted of an attempt
27 under K.S.A. 21-3301, prior to its repeal, or K.S.A. 2020 Supp. 21-5301,
28 and amendments thereto, to commit any such act or been convicted of
29 conspiracy under K.S.A. 21-3302, prior to its repeal, or K.S.A. 2020 Supp.
30 21-5302, and amendments thereto, to commit such act, or similar statutes
31 of any other state or the federal government;

32 (D) has been convicted of any act that is described in K.S.A. 21-4301
33 or 21-4301a, prior to their repeal, or K.S.A. 2020 Supp. 21-6401, and
34 amendments thereto, or similar statutes of any other state or the federal
35 government; or

36 (E) has been convicted of any act that is described in K.S.A. 21-3718

1 or 21-3719, prior to their repeal, or K.S.A. 2020 Supp. 21-5812, and
2 amendments thereto, or similar statutes of any other state or the federal
3 government;

4 (2) has been adjudicated a juvenile offender because of having
5 committed an act that if done by an adult would constitute the commission
6 of a felony and that is a crime against persons, is any act described in
7 articles 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior
8 to their repeal, or article 54, 55 or 56 of chapter 21 of the Kansas Statutes
9 Annotated, or K.S.A. 2020 Supp. 21-6104, 21-6325, 21-6326, 21-6418
10 through 21-6422 or 21-6424, and amendments thereto, or similar statutes
11 of any other state or the federal government, or is any act described in
12 K.S.A. 21-4301 or 21-4301a, prior to their repeal, or K.S.A. 2020 Supp.
13 21-6401, and amendments thereto, or similar statutes of any other state or
14 the federal government, *subject to the provisions of subsection (k)*;

15 (3) has been convicted or adjudicated of a crime that requires
16 registration as a sex offender under the Kansas offender registration act,
17 K.S.A. 22-4901 et seq., and amendments thereto, as a sex offender in any
18 other state or as a sex offender on the national sex offender registry;

19 (4) has committed an act of physical, mental or emotional abuse or
20 neglect or sexual abuse and who is listed in the child abuse and neglect
21 registry maintained by the Kansas department for children and families
22 pursuant to K.S.A. 2020 Supp. 38-2226, and amendments thereto, or any
23 similar child abuse and neglect registries maintained by any other state or
24 the federal government and:

25 (A) The person has failed to successfully complete a corrective action
26 plan that had been deemed appropriate and approved by the Kansas
27 department for children and families or requirements of similar entities in
28 ~~any~~ *the* other state or the federal government; or

29 (B) the record has not been expunged pursuant to rules and
30 regulations adopted by the secretary for children and families or similar
31 entities in ~~any~~ *the* other state or the federal government;

32 (5) has had a child removed from home based on a court order
33 pursuant to K.S.A. 2020 Supp. 38-2251, and amendments thereto, in this
34 state, or a court order in any other state based upon a similar statute that
35 finds the child to be deprived or a child in need of care based on a finding
36 of physical, mental or emotional abuse or neglect or sexual abuse and:

37 (A) The child has not been returned to the home or the child reaches
38 majority before being returned to the home; and

39 (B) the person has failed to satisfactorily complete a corrective action
40 plan approved by the ~~Kansas department of health and environment for~~
41 *children and families or the requirements of similar entities in any other*
42 *state or the federal government*;

43 (6) has had parental rights terminated pursuant to the Kansas juvenile

1 code or K.S.A. 2020 Supp. 38-2266 through 38-2270, and amendments
2 thereto, or a similar statute of ~~other states~~ *any other state*;

3 (7) has signed a diversion agreement pursuant to K.S.A. 22-2906 et
4 seq., and amendments thereto, or an immediate intervention agreement
5 pursuant to K.S.A. 2020 Supp. 38-2346, and amendments thereto,
6 involving a charge of child abuse or a sexual offense *or similar statutes of*
7 *any other state or the federal government*; or

8 (8) has an infectious or contagious disease, *subject to the provisions*
9 *of subsection (k)*.

10 (b) No person shall maintain a child care facility if such person has
11 been found to be a person in need of a guardian or a conservator, or both,
12 as provided in K.S.A. 59-3050 through 59-3095, and amendments thereto.

13 (c) Any person who resides in a child care facility and who has been
14 found to be in need of a guardian or a conservator, or both, shall be
15 counted in the total number of children allowed in care.

16 (d) In accordance with the provisions of this subsection, the secretary
17 of health and environment shall have access to any court orders or
18 adjudications of any court of record, any records of such orders or
19 adjudications, criminal history record information including, but not
20 limited to, diversion agreements, in the possession of the Kansas bureau of
21 investigation and any report of investigations as authorized by K.S.A.
22 2020 Supp. 38-2226, and amendments thereto, in the possession of the
23 Kansas department for children and families or court of this state
24 concerning persons working, regularly volunteering or residing in a child
25 care facility. The secretary shall have access to these records for the
26 purpose of determining whether or not the home meets the requirements of
27 K.S.A. 59-2132, 65-503, 65-508 and 65-516, and amendments thereto.

28 (e) In accordance with the provisions of this subsection, the secretary
29 is authorized to conduct national criminal history record checks to
30 determine criminal history on persons residing, working or regularly
31 volunteering in a child care facility. In order to conduct a national criminal
32 history check the secretary shall require fingerprinting for identification
33 and determination of criminal history. The secretary shall submit the
34 fingerprints to the Kansas bureau of investigation and to the federal bureau
35 of investigation and receive a reply to enable the secretary to verify the
36 identity of such person and whether such person has been convicted of any
37 crime that would prohibit such person from residing, working or regularly
38 volunteering in a child care facility. The secretary is authorized to use
39 information obtained from the national criminal history record check to
40 determine such person's fitness to reside, work or regularly volunteer in a
41 child care facility.

42 (f) Local and state law enforcement officers and agencies shall assist
43 the secretary in taking and processing fingerprints of persons residing,

1 working or regularly volunteering in a child care facility and shall release
2 all records of adult convictions and nonconvictions and adult convictions
3 or adjudications of another state or country to the department.

4 (g) (1) The secretary shall adopt rules and regulations on or before
5 January 1, 2019, to fix a fee for fingerprinting persons residing, working or
6 regularly volunteering in a child care facility, as may be required by the
7 department to reimburse the department for the cost of the fingerprinting.

8 (2) The secretary shall remit all moneys received from the fees
9 established under this section to the state treasurer in accordance with the
10 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
11 each such remittance, the state treasurer shall deposit the entire amount in
12 the state treasury to the credit of the child care criminal background and
13 fingerprinting fund.

14 (h) The child care criminal background and fingerprinting fund is
15 hereby created in the state treasury to be administered by the secretary of
16 health and environment. All moneys credited to the child care criminal
17 background and fingerprinting fund shall be used to pay local and state
18 law enforcement officers and agencies for the processing of fingerprints
19 and criminal history background checks for the department. All
20 expenditures from the child care criminal background and fingerprinting
21 fund shall be made in accordance with appropriation acts upon warrants of
22 the director of accounts and reports issued pursuant to vouchers approved
23 by the secretary or by a person designated by the secretary.

24 (i) The secretary shall notify the child care applicant or licensee,
25 within seven days by certified mail with return receipt requested, when the
26 result of the national criminal history record check or other appropriate
27 review reveals unfitness specified in ~~subsections subsection (a)(1) through~~
28 ~~(8)~~ with regard to the person who is the subject of the review.

29 (j) No child care facility or the employees thereof, shall be liable for
30 civil damages to any person refused employment or discharged from
31 employment by reason of such facility's or home's compliance with the
32 provisions of this section if such home acts in good faith to comply with
33 this section.

34 (k) *At the discretion of the secretary for children and families, a child*
35 *care facility that is licensed by or is applying for licensure from the*
36 *Kansas department for children and families may be exempted from the*
37 *provisions of subsection (a)(1), (a)(2) or (a)(8), if the secretary determines*
38 *that such exemption:*

39 (1) *Is in the best interests of a child in the custody of the secretary*
40 *who is or will be under the care of such child care facility; and*

41 (2) *does not present a safety concern.*

42 (l) For the purpose of subsection (a)(~~3~~)(4), a person listed in the child
43 abuse and neglect central registry shall not be prohibited from residing,

1 working or volunteering in a child care facility unless such person has:
 2 (1) Had an opportunity to be interviewed and present information
 3 during the investigation of the alleged act of abuse or neglect; and
 4 (2) been given notice of the agency decision and an opportunity to
 5 appeal such decision to the secretary and to the courts pursuant to the
 6 Kansas judicial review act.

7 ~~(h)~~(m) In regard to Kansas issued criminal history records:
 8 (1) The secretary ~~of health and environment~~ shall provide in writing
 9 information ~~available to the secretary~~ to each child placement agency
 10 requesting information under this section, including the information
 11 provided by the Kansas bureau of investigation pursuant to this section, for
 12 the purpose of assessing the fitness of persons living, working or regularly
 13 volunteering in a family foster home under the child placement agency's
 14 sponsorship.

15 (2) The child placement agency is considered to be a governmental
 16 entity and the designee of the secretary ~~of health and environment~~ for the
 17 purposes of obtaining, using and disseminating information obtained under
 18 this section.

19 (3) The information shall be provided to the child placement agency
 20 regardless of whether the information discloses that the subject of the
 21 request has been convicted of any offense.

22 (4) Whenever the information available to the secretary reveals that
 23 the subject of the request has no criminal history on record, the secretary
 24 shall provide notice thereof in writing to each child placement agency
 25 requesting information under this section.

26 (5) Any staff person of a child placement agency who receives
 27 information under this subsection shall keep such information confidential,
 28 except that the staff person may disclose such information on a need-to-
 29 know basis to:

30 (A) The person who is the subject of the request for information;
 31 (B) the applicant or operator of the family foster home ~~in which~~
 32 *where* the person lives, works or regularly volunteers;
 33 (C) the department of health and environment;
 34 (D) the Kansas department for children and families;
 35 (E) the department of corrections; and
 36 (F) the courts.

37 (6) A violation of the provisions of subsection ~~(h)~~(m)(5) shall be an
 38 unclassified *nonperson* misdemeanor punishable by a fine of \$100 for each
 39 violation.

40 ~~(m)~~(n) No person shall maintain a day care facility unless such person
 41 is a high school graduate or the equivalent thereof, except where
 42 extraordinary circumstances exist, the secretary of health and environment
 43 may exercise discretion to make exceptions to this requirement. The

1 provisions of this subsection shall not apply to any person who was
2 maintaining a day care facility on the day immediately prior to July 1,
3 2010, or who had an application for an initial license or the renewal of an
4 existing license pending on July 1, 2010.

5 Sec. 2. K.S.A. 65-516 is hereby repealed.

6 Sec. 3. This act shall take effect and be in force from and after its
7 publication in the statute book.